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Attorneys for Defendants GREG KUHL,  
SUSAN SPARLING, ALEX KAPLAN,  
NANCY WORRELL, DANIEL WARD,  
WILLIAM KINNANE, CHRISTINE ZWERLING,  
and MARCIA HODGES

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

In re:

INDEPENDENT ADOPTION CENTER,

Debtor.

MARLENE G. WEINSTEIN,

Plaintiff,

vs.

GREG KUHL, SUSAN SPARLING, ALEX  
KAPLAN, NANCY WORRELL, DANIEL  
WARD, WILLIAM KINNANE, CHRISTINE  
ZWERLING, MARCIA HODGES and  
NAVIGATORS INSURANCE COMPANY,

Defendants.

Case No. 17-40327 RLE

Chapter 7

Adv. Pro. No. 17-04020 RLE

**DEFENDANTS' ANSWER TO  
COMPLAINT**

**JURY TRIAL DEMANDED**

Reserving all rights and remedies, defendants GREG KUHL, SUSAN SPARLING,  
ALEX KAPLAN, NANCY WORRELL, DANIEL WARD, WILLIAM KINNANE,  
CHRISTINE ZWERLING and MARCIA HODGES ("Defendants") in the above-captioned  
Adversary Proceeding No.17-04020 ("Adversary Proceeding"), hereby answer and raise  
affirmative defenses to Plaintiff Marlene G. Weinstein's ("Plaintiff") complaint for: (1) Breach  
of Fiduciary Duty Against the Director Defendants; (2) Negligence Against the Director

1 Defendants; (3) Declaratory Relief Against the Director Defendants; (4) Breach of Fiduciary  
2 Duty Against the Officer Defendant; and (5) Negligence Against the Officer Defendant.  
3 Defendants DENY all allegations of the Complaint not otherwise expressly admitted and to the  
4 extent they state legal conclusions and are vague, incomplete and inaccurate except those  
5 specifically admitted below.

6 1. Defendants ADMIT the allegations in ¶¶1 – 2 of the Complaint.

7 2. Answering ¶3 of the Complaint, Defendants DENY that the matter is a core  
8 proceeding.

9 3. Defendants ADMIT the allegation in ¶4 of the Complaint.

10 4. Answering ¶5 of the Complaint, no response is required as to the Plaintiff's  
11 consent. Defendants do not consent to entry of a final judgment or order by the Bankruptcy  
12 Court in this Adversary Proceeding.

13 5. Answering the allegations in ¶¶6 – 12 of the Complaint, Defendants GREG  
14 KUHL, SUSAN SPARLING, ALEX KAPLAN, NANCY WORRELL, DANIEL WARD,  
15 WILLIAM KINNANE, and CHRISTINE ZWERLING ADMIT only that each served on the  
16 Board of Directors of the Debtor, Independent Adoption Center ("the Debtor").

17 6. Answering the allegations in ¶14 of the Complaint, Defendant MARCIA  
18 HODGES ADMITS that she served as the interim Executive Director of the Independent  
19 Adoption Center (referred to in the Complaint as "the Debtor") from March 2016 until the  
20 Petition Date.

21 7. Answering the allegations in ¶16 of the Complaint, Defendants and each of them  
22 ADMIT that they obtained and/or made all reasonable efforts to obtain as insureds a directors  
23 and officers liability insurance policy issued by Navigators Insurance Policy, policy No.  
24 NY16DOLV02898NV, with a policy period from March 24, 2016, through March 24, 2017 ("the  
25 Policy"). Defendants at all times herein are informed and believe that they are and were covered  
26 insureds under the Policy.

27 8. Answering the allegations in ¶17 of the Complaint, Defendants and each of them  
28 ADMIT that they obtained and/or made all reasonable efforts to obtain as insureds, a directors

1 and officers liability insurance policy issued by Navigators Insurance Policy, policy No.  
2 NY16DOLV02898NV, with a policy period from March 24, 2016, through March 24, 2017 with  
3 the intent to obtain insurance coverage for their conduct as directors and officers of the Debtor.  
4 Defendants at all times herein are informed and believe that they are and were covered insureds  
5 under the Policy and that the allegations in the Complaint are covered under the Policy.

6 **BACKGROUND FACTS**

7 9. Answering ¶18 of the Complaint, Defendants ADMIT this allegation.

8 10. Answering the allegations in ¶19 of the Complaint, Defendants and each of them  
9 ADMIT that the Debtor provided adoption-related services to individuals seeking to adopt and  
10 otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

11 11. Answering the allegations of ¶20 of the Complaint, the allegations purport to  
12 recite the contents of a document or documents, which speak for themselves. To the extent a  
13 response is required, Defendants ADMIT the allegation that the Debtor is exempt under section  
14 501(c)(3) of the Internal Revenue Code.

15 12. Answering the allegations of ¶21 of the Complaint, Defendants ADMIT that the  
16 Debtor provided adoption-related services through January 31, 2017, and otherwise DENY the  
17 allegations to the extent they are incomplete and/or inaccurate.

18 13. Answering the allegations of ¶22 of the Complaint, the allegations purport to  
19 recite the contents of a document or documents, and laws and regulations, which speak for  
20 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide  
21 by the by-laws and applicable laws and regulations.

22 14. Answering the allegations of ¶23 of the Complaint, the allegations purport to  
23 recite the contents of a document or documents, and laws and regulations, which speak for  
24 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide  
25 by the by-laws cited.

26 15. Answering the allegations of ¶24 of the Complaint, the allegations purport to  
27 recite the contents of a document or documents, and laws and regulations, which speak for  
28 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide

1 by the by-laws cited.

2 16. Answering the allegations of ¶25 of the Complaint, the allegations purport to  
3 recite the contents of a document or documents, and laws and regulations, which speak for  
4 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide  
5 by the by-laws cited.

6 17. Answering the allegations of ¶26 of the Complaint, the allegations purport to  
7 recite the contents of a document or documents, and laws and regulations, which speak for  
8 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide  
9 by the by-laws cited.

10 18. Answering the allegations of ¶27 of the Complaint, the allegations purport to  
11 recite the contents of a document or documents, and laws and regulations, which speak for  
12 themselves. To the extent a response is required, Defendants ADMIT that they intended to abide  
13 by the by-laws cited.

14 19. Defendant ADMITS the allegations in ¶28 of the Complaint.

15 20. Answering the allegations of ¶29 of the Complaint, Defendants ADMIT that the  
16 Debtor provided adoption-related services through January 31, 2017, and otherwise DENY the  
17 allegations to the extent they are incomplete and/or inaccurate.

18 21. Answering the allegations of ¶30 of the Complaint, Defendants ADMIT that the  
19 Debtor operated adoption centers in multiple states and otherwise DENY the allegations to the  
20 extent they are incomplete and/or inaccurate.

21 22. Answering the allegations of ¶31 of the Complaint, Defendants ADMIT that the  
22 Debtor provided adoption-related services through January 31, 2017, and otherwise DENY the  
23 allegations to the extent they are incomplete and/or inaccurate.

24 23. Answering the allegations of ¶32 of the Complaint, Defendants ADMIT that the  
25 Debtor entered into contracts with individuals seeking to adopt and otherwise DENY the  
26 allegations to the extent they are incomplete and/or inaccurate.

27 24. Answering the allegations of ¶33 of the Complaint, Defendants ADMIT that the  
28 Debtor provided adoption-related services through January 31, 2017, and otherwise DENY the

1 allegations to the extent they are incomplete and/or inaccurate.

2 25. Answering the allegations of ¶34 of the Complaint, Defendants ADMIT that the  
3 Debtor entered into contracts with individuals seeking to adopt and otherwise DENY the  
4 allegations to the extent they are incomplete and/or inaccurate.

5 26. Answering the allegations of ¶35 of the Complaint, Defendants ADMIT that the  
6 availability of birth mothers affected the operation of the Debtor and otherwise DENY the  
7 allegations to the extent they are incomplete and/or inaccurate.

8 27. Answering the allegations of ¶36 of the Complaint, Defendants ADMIT that the  
9 availability of birth mothers affected the operation of the Debtor and otherwise DENY the  
10 allegations to the extent they are incomplete and/or inaccurate.

11 28. Answering the allegations of ¶37 of the Complaint, Defendants ADMIT that the  
12 availability of birth mothers affected the operation of the Debtor and otherwise DENY the  
13 allegations to the extent they are incomplete and/or inaccurate.

14 29. Answering the allegations of ¶38 of the Complaint, Defendants ADMIT that the  
15 Debtor faced financial hardship for various reasons and otherwise DENY the allegations to the  
16 extent they are incomplete and/or inaccurate.

17 30. Answering the allegations of ¶39 of the Complaint, Defendants ADMIT that the  
18 Debtor provided adoption-related services to individuals seeking to adopt through January 31,  
19 2017, and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

20 31. Answering the allegations of ¶40 of the Complaint, Defendants ADMIT that the  
21 Debtor provided adoption-related services to individuals seeking to adopt through January 31,  
22 2017, and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

23 32. Answering the allegations of ¶41 of the Complaint, Defendants ADMIT that the  
24 Debtor provided adoption-related services to individuals seeking to adopt through January 31,  
25 2017, and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

26 33. Answering the allegations of ¶43 of the Complaint, the Director Defendants  
27 ADMIT that the decision was made to file bankruptcy on the advice and opinion of legal counsel  
28 and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

1           34.     Answering the allegations of ¶44 of the Complaint, Defendants ADMIT that the  
2 Debtor provided adoption-related services to individuals seeking to adopt through January 31,  
3 2017, and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

4           35.     Answering the allegations of ¶¶46-47 of the Complaint, Defendants ADMIT that  
5 they did not provide notice of the Debtor's closure.

6           36.     Answering the allegations of ¶48 of the Complaint, Defendants ADMIT that the  
7 states in which the Debtor operated regulated adoption services and otherwise DENY the  
8 allegations to the extent they are incomplete and/or inaccurate.

9           37.     Answering the allegations of ¶¶49 - 51 of the Complaint, the Director Defendants  
10 ADMIT that the decision was made to file bankruptcy on the advice and opinion of legal counsel  
11 and otherwise DENY the allegations to the extent they are incomplete and/or inaccurate.

12           38.     Answering the allegations of ¶52 of the Complaint, Defendants ADMIT that the  
13 decision to file bankruptcy and handling of the Debtor's files was made on the advice and  
14 opinion of legal counsel and otherwise DENY the allegations to the extent they are incomplete  
15 and/or inaccurate.

16           39.     Answering the allegations of ¶53 of the Complaint, Defendants ADMIT on  
17 information and belief that the California Department of Social Services filed a brief in the  
18 bankruptcy case and otherwise DENY in full the allegations therein and in the Complaint to the  
19 extent they are incomplete and/or inaccurate.

20           40.     Answering the allegations of ¶54 of the Complaint, Defendants ADMIT that the  
21 decision to file bankruptcy and handling of the Debtor's files was made on the advice and  
22 opinion of legal counsel and otherwise DENY the allegations to the extent they are incomplete  
23 and/or inaccurate.

24                           **AFFIRMATIVE DEFENSES**

25           1.     As a separate affirmative defense, Defendants allege the Complaint, and each and  
26 every Claim for Relief therein, fails to state a claim upon which relief can be granted.

27           2.     As a separate affirmative defense, Plaintiff brings this action against the Director  
28 Defendants in violation of public policy and is barred from seeking personal liability against

1 them including recovery of monetary damages for any actions alleged pursuant to 42 U.S.C.  
2 section 14503 and California Corporations Code sections 5047.5, 5231 and 5239.

3 3. As a separate affirmative defense, at all times Defendants acted in good faith and  
4 in the best interests of the Debtor and its clients.

5 4. As a separate affirmative defense, at all times Defendants acted with due care  
6 owed to the Debtor and its clients.

7 5. As a separate affirmative defense, at all times Defendants acted with a duty of  
8 loyalty to the Debtor and its clients.

9 6. As a separate affirmative defense, Defendants allege that any recovery on  
10 Plaintiff's Complaint, or any cause of action contained therein, is barred by the business  
11 judgment rule and the provisions of California Corporations Code section 5231.

12 7. As a separate affirmative defense, Defendants allege that any action by  
13 Defendants was not the proximate cause of any alleged injuries or damages Plaintiff now claims  
14 were sustained.

15 8. As a separate affirmative defense, Defendants allege the relief prayed for in  
16 Plaintiff's Complaint is barred because, if Defendants engaged in any of the alleged conduct,  
17 they had good cause to do so.

18 9. As a separate affirmative defense, Defendants allege that any and all decisions  
19 made and actions taken by and/or on behalf of Defendant were made and taken in the exercise of  
20 proper managerial discretion and in good faith.

21 10. Defendants allege that any and all decisions made and actions taken by and/or on  
22 behalf of the Debtor and its clients were based upon lawful and valid business reasons.

23 11. As a separate affirmative defense, Defendants allege the Complaint is barred in  
24 whole or part by Defendants' privilege and justification under the circumstances for the acts and  
25 omissions alleged in the Complaint and that any failure to perform any duties on their part,  
26 which failure is specifically denied, was justified and privileged.

27 12. As a separate affirmative defense, the claims of the Plaintiff are barred by the fact  
28 Defendants acted reasonably and in good faith at all times material herein, based on the relevant



1 facts and circumstances known by Defendants at the time they so acted.

2 13. As a separate affirmative defense, Defendants allege that Plaintiff's Complaint is  
3 couched in conclusory terms including but not limited to allegations of legal conclusions.

4 14. As a separate affirmative defense, Defendants allege that Plaintiff's Complaint  
5 and each cause of action therein are barred by the doctrines of waiver, estoppel, and unclean  
6 hands.

7 15. As a separate and distinct affirmative defense, Defendants allege that the conduct  
8 and violations of law alleged against Defendants are not sufficient to be willful or intentional.

9 16. As a separate and distinct affirmative defense, Plaintiff is barred from any  
10 recovery against Defendants because Plaintiff's alleged damages are speculative.

11 17. As a separate and distinct affirmative defense, Defendants alleges that Plaintiff's  
12 claims are limited or barred in that any injuries or damages alleged by Plaintiff, if any, were the  
13 result of new, independent, intervening, or superseding causes that are unrelated to any conduct  
14 of Defendants. Any actions on the part of Defendants were not the proximate or producing cause  
15 of any alleged injuries or damages Plaintiff claims were sustained.

16 18. As a separate and distinct affirmative defense, Defendants allege that any injuries  
17 or damages alleged by Plaintiff, if any, were caused, in whole or in part, by acts or omissions of  
18 others, for whose conduct Defendants are not responsible.

19 19. As a separate and distinct affirmative defense, Defendants allege as an affirmative  
20 defense that the Complaint and each of the causes of action therein are barred due to the  
21 Plaintiff's lack of standing.

22 20. As a separate and distinct affirmative defense, Defendants allege to the extent that  
23 any of the alleged wrongs were committed after Defendants reasonably relied in good faith on  
24 the advice of legal counsel, any and all claims are barred as against Defendants in their entirety.

25 21. As a separate affirmative defense, Defendants allege they have not knowingly or  
26 intentionally waived any applicable affirmative defenses, and reserve the right to assert and rely  
27 on such other applicable affirmative defenses as may come available or become apparent during  
28 discovery proceedings. Defendants further reserve the right to amend this Answer accordingly



1 and to delete defenses if they determine they are not applicable during the course of discovery  
2 and other proceedings in this Adversary Proceeding.

3  
4 **WHEREFORE**, Defendants pray for judgment as follows:

- 5 1. That Plaintiff take nothing by reason of the Complaint on file herein;  
6 2. That judgment in this action be entered in favor of Defendants and against  
7 Plaintiff;  
8 3. That Defendants be awarded costs of suit incurred herein;  
9 4. That Defendants be awarded reasonable attorneys' fees incurred herein, pursuant  
10 to applicable law; and  
11 5. For any and all such other relief as this Court may seem just and proper.

12 Dated: May 30, 2017

GORDON & REES LLP

13  
14 By /s/ Sandi M. Colabianchi  
Sandi M. Colabianchi  
Joseph P. Breen  
15 Attorneys for Defendants GREG KUHL, SUSAN  
16 SPARLING, ALEX KAPLAN, NANCY  
17 WORRELL, DANIEL WARD, WILLIAM  
KINNANE, CHRISTINE ZWERLING and  
18 MARCIA HODGES

19 **JURY DEMAND**

20 Defendants GREG KUHL, SUSAN SPARLING, ALEX KAPLAN, NANCY  
21 WORRELL, DANIEL WARD, WILLIAM KINNANE, CHRISTINE ZWERLING and  
22 MARCIA HODGES hereby demand a jury trial.

23 Dated: May 30, 2017

GORDON & REES LLP

24  
25 By /s/ Sandi M. Colabianchi  
Sandi M. Colabianchi  
Joseph P. Breen  
26 Attorneys for Defendants GREG KUHL, SUSAN  
27 SPARLING, ALEX KAPLAN, NANCY  
WORRELL, DANIEL WARD, WILLIAM  
28 KINNANE, CHRISTINE ZWERLING and  
MARCIA HODGES